



MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

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May 13, 2014

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City of St. Paul
290 City Hall
15 W Kellogg Blvd
Saint Paul, MN 55102

**Re: *In the Matter of the Cigarette Tobacco Licence and Alarm Permit held
by William LS Company d/b/a St. Paul Grocery***
OAH 11-6020-31183

Dear Party:

Enclosed and served upon you is the Administrative Law Judge's **RECOMMENDED ORDER ON CITY'S MOTION FOR PARTIAL SUMMARY DISPOSITION AND ORDER CERTIFYING MATTER TO SAINT PAUL CITY COUNCIL** in the above-entitled matter. The official record, with the exception of the recording of the hearing, is also enclosed. If you would like a copy of the recording, please contact the Office of Administrative Hearings in writing, by telephone at 651-361-7898, or by e-mail at Suzanne.segl@state.mn.us.

If you have any questions, please contact my legal assistant Rachel Youness at (651) 361-7881 or rachel.youness@state.mn.us.

Sincerely,

BARBARA L. NEILSON
Administrative Law Judge

BLN:ry
Enclosure
cc: Geoffrey S. Karls
Terry A. Watkins

RECEIVED

MAY 14 2014

CITY ATTORNEY

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF SAINT PAUL

In the Matter of the Cigarette
Tobacco License and Alarm Permit
held by William LS Company
d/b/a St. Paul Grocery

**RECOMMENDED ORDER ON CITY'S
MOTION FOR PARTIAL SUMMARY
DISPOSITION AND ORDER CERTIFYING
MATTER TO SAINT PAUL CITY COUNCIL**

This matter is pending before Administrative Law Judge Barbara L. Neilson pursuant to a Notice and Order for Prehearing Conference and Hearing dated January 3, 2014. On February 28, 2014, a Motion for Partial Summary Disposition was filed by the City of Saint Paul. A Response in Opposition to the Motion was filed on March 14, 2014, and a Reply in Support of the Motion was filed on March 24, 2014. Oral argument regarding the motion was heard on April 8, 2014.

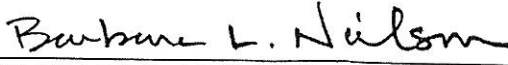
Geoffrey S. Karls, Assistant City Attorney, appeared on behalf of the Saint Paul Department of Safety and Inspections (City). Terry A. Watkins, Watkins Law Office, appeared on behalf of William LS Company d/b/a St. Paul Grocery by its named agent Saed Marouf (Respondent).

Based upon all the files, records and proceedings herein, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDED ORDER

1. It is hereby **RECOMMENDED** that the City's Motion for Partial Summary Disposition under Saint Paul Legislative Code Section 310.06(b)(1) and (2) be **DENIED**.
2. It is further **RECOMMENDED** that the City's Motion for Partial Summary Disposition under Code Section 310.06(b)(4) be **GRANTED** and that the City take disciplinary action against Respondent's license and permit under that provision.
3. It is hereby **ORDERED** that this matter is **CERTIFIED** to the Saint Paul City Council for a final decision pursuant to Minn. R. 1400.7600(B). The OAH hearing previously scheduled for June 3, 2014, is cancelled and the official record returned.

Dated: May 9, 2014



BARBARA L. NEILSON
Administrative Law Judge

MEMORANDUM

Background

Prior to September of 2013, an entity called "Jamal & Saed Co." (Jamal & Saed) held a tobacco license for St. Paul Grocery, a convenience store which had two locations in St. Paul: one at 712 West University Avenue and the other at 631 West University Avenue.¹ Jamal Aden was the named responsible person for licensure purposes.² At some point, the store at 631 University closed.³

On July 10, 2013, the City initiated an action against Jamal & Saed Co. d/b/a St. Paul Grocery Store for the premises located at 712 University Avenue. In that action, the City sought to revoke all licenses held by Jamal & Saed based upon alleged illegal activities conducted at the store. Among other things, the City alleged that Jamal & Saed had purchased and allowed the purchase of stolen retail items; had exchanged and allowed the exchange of food stamp benefits for cash; had sold and allowed the sale of synthetic marijuana; and had sold single cigarettes (also called "loosies").⁴

A hearing was held in the Jamal & Saed matter before Administrative Law Judge Thomas W. Wexler on October 2, 2013. Judge Wexler issued his Findings of Fact, Conclusions of Law, and Recommendation in the case on November 7, 2013. His Findings included the following:

Jamal Mohamud Aden and Nahida (Saed) Marouf are each fifty percent owners of Jamal & Saed Co. d/b/a St. Paul Grocery Store, which is a Minnesota limited partnership.⁵

A confidential informant purchased two loosies from Mr. Marouf on January 11, 2013.⁶

When a confidential informant offered to sell four new containers of laundry detergent to Mr. Marouf at the store on June 6, 2013, and told him that the items had been stolen, Mr. Marouf placed a telephone call and then told the informant to go to another location to receive payment.⁷

On June 6, 2013, simultaneous search warrants were executed at two store locations and at the residences of Mr. Aden and Mr. Marouf. At one store

¹ Affidavit (Aff.) of Geoffrey Karls, Exhibit (Ex.) A-2 (filed with the City's Motion for Partial Summary Disposition).

² Aff. of Jeffrey Fischbach, Ex. B-1 (filed with the City's Motion for Partial Summary Disposition).

³ Aff. of G. Karls, Ex. A-2.

⁴ See *In the Matter of All Licenses held by Jamal & Saed Co., d/b/a St. Paul Grocery Store, for the Premises Located at 712 University Avenue West in St. Paul*, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION, OAH Docket No. 66-6020-30885 (Nov. 7, 2013) at Ex. A-3 through A-4 (Finding of Fact No. 6) (attached to the Aff. of G. Karls).

⁵ *Id.* at A-2 (Finding of Fact No. 1); see also Aff. of J. Fischbach, Ex. A-11 (copy of 2010-11 lease for the 712 University Avenue property which was signed by Jamal Aden and Saed Marouf and included an option to renew).

⁶ *Id.* at A-4 (Finding of Fact No. 7).

⁷ *Id.* (Finding of Fact No. 8).

location, they seized a large amount of synthetic drugs. They also seized electronic evidence which tended to show welfare fraud.⁸

There is "substantial reason to believe that the stores are engaging in criminal activity" as well as "substantial reason to believe that the stores are attracting persons who are inclined to engage in unlawful activity, including the collateral consequences of that activity, fights, shootings and disorderly conduct."⁹

Judge Wexler concluded that the City had shown "substantial and compelling reasons" to revoke all City licenses held by the Licensee for reasons set forth in Saint Paul Legislative Code (Code) Sections 310.06(b)(6)(a) and (c) and 310.06(b)(8).¹⁰ While no one had been charged with any crimes at that point, Judge Wexler determined that there was "more than probable cause to believe that Licensee [Jamal & Saed Co.] has knowingly received stolen goods, sold and possessed illegal drugs, engaged in fraudulent transactions, and violated cigarette sales laws."¹¹ He concluded that the City "has abundant direct evidence to justify revocation of Licensee's sole remaining City license, the cigarette license" and recommended that the City Council do so.¹²

Neither party filed any exceptions to Judge Wexler's report.¹³ A public hearing on the matter was held before the Saint Paul City Council on November 20, 2013.¹⁴ At that time, the Council considered all of the evidence contained in the record, the arguments of the attorney for Jamal & Saed that were made during the hearing, and Judge Wexler's report.¹⁵ On December 11, 2013, the City Council passed a resolution which adopted the Findings of Fact, Conclusions of Law, and Recommendation issued by Judge Wexler.¹⁶ The Council unanimously voted to revoke all licenses held by Jamal & Saed Co. d/b/a St. Paul Grocery Store and expressly found that, due to the serious nature of the violations, a deviation from the penalty matrix was appropriate.¹⁷ Mayor Coleman approved the resolution on December 16, 2013.¹⁸

Current Proceeding

Based on the statements in the affidavits filed in this matter, the following facts appear to be undisputed. On September 27, 2013, five days before the start of the hearing before Judge Wexler, Saed Marouf went to the City's Department of Safety and Inspections and filed an application for a cigarette/tobacco license and an alarm permit for a business he had just purchased. In his application and supporting materials, Mr. Marouf indicated that he was the licensee/owner of the business; the company name

⁸ *Id.* at A-4 through A-5 (Finding of Fact No. 10).

⁹ *Id.* at A-5 (Finding of Fact No. 11).

¹⁰ *Id.* at A-6 (Conclusion of Law No. 8).

¹¹ *Id.* at A-7 (Memorandum).

¹² *Id.*

¹³ City of Saint Paul Resolution 13-1985 at C-1 (attached as Ex. C to Aff. of G. Karls).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at C-1 through C-2.

¹⁷ *Id.* at C-2.

¹⁸ *Id.*

was William LS Company; the name on the business sign was St. Paul Grocery; the address of the business was 712 University Avenue West, St. Paul; and the anticipated date of opening was September 27, 2013.¹⁹ The bottom of the first page of the application form included a section entitled "Licensee Work History (list name, address and phone number of all employers for the previous 5 year period)." Mr. Marouf made only one entry in this section: "927 University Ave. St. Paul MN 55104."²⁰ Along with his application form, Mr. Marouf provided a Zoning Summary Sheet which set forth the address, size, floor plan, site plan, and intended uses of the business;²¹ a copy of a Lease Agreement dated September 9, 2010, between HLS Investment (landlord) and Jamal Aden and Saed Marouf (tenants) for 712 University Avenue West;²² a copy of Articles of Incorporation for William LS Company which were stamped as having been filed with the Minnesota Secretary of State's Office on September 27, 2013;²³ and a signed agreement noting that certain conditions applied to temporary window signs in the store.²⁴ The City subsequently issued the requested cigarette tobacco license and alarm permit to Mr. Marouf.²⁵

On January 6, 2014, the City filed a Notice and Order for Prehearing Conference and Hearing in this matter. In the Notice, the City indicated that it had initiated this action to determine whether to take adverse action against William LS Company d/b/a St. Paul Grocery by its named agent, Saed Marouf (Respondent). The City alleged that revocation of all licenses held by Respondent was appropriate on the following grounds set forth in Code Section 310.06(b)(1), (2), (4), (6)(a) and (c), (7) and (8):

- (1) the license was procured by misrepresentations of material facts, fraud, deceit and bad faith;
- (2) the licensee made oral or written misstatements or misrepresentations of material facts in or accompanying the application;

* * *

- (4) the license was issued in violation of law, without authority, and under material mistake of fact;

* * *

- (6)(a) the licensee has violated a statute, ordinance or regulation reasonably related to the licensed activity;

* * *

¹⁹ See Class R License Application (attached to the Aff. of J. Fischbach as Ex. A), at A-1.

²⁰ *Id.*

²¹ *Id.* at A-3.

²² *Id.* at A-4 through A-11.

²³ *Id.* at A-12.

²⁴ *Id.* at A-13.

²⁵ Aff. of J. Fischbach, ¶ 8.

- (6)(c) the licensee has engaged in or permitted a pattern or practice of conduct of failure to comply with laws reasonably related to the licensed activity, or from which an inference of lack of fitness or good character may be drawn;
- (7) the activities of licensee have created a serious danger to the public health, safety or welfare; and
- (8) the licensee has maintained or permitted conditions that unreasonably annoy, injure or endanger the safety, health, morals, comfort or repose of any considerable number of members of the public.²⁶

Motion for Summary Disposition

On February 28, 2014, the City filed a Motion for Partial Summary Disposition in this matter. Summary disposition is the administrative equivalent of summary judgment.²⁷ The granting of a motion for summary disposition is appropriate when there is no genuine dispute as to the material facts involved in a contested case and the law as applied to those undisputed facts clearly requires a ruling in favor of one of the parties.²⁸ The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition regarding contested case matters.²⁹

The party filing the motion (here, the City) must demonstrate that there are no genuine issues of material fact that would preclude disposition of the case as a matter of law.³⁰ When considering a motion for summary disposition, the tribunal must view the facts in the light most favorable to the non-moving party.³¹ All doubts and factual inferences must be resolved against the moving party.³² If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.³³

In order to defeat an otherwise proper motion for summary disposition, the non-moving party (here, the Respondent) must show the existence of material facts that are genuinely disputed.³⁴ A genuine issue is one that is not a sham or frivolous, and a

²⁶ Section 310.06 of the Code is attached to Aff. of G. Karls as Exs. D-7 through D-10.

²⁷ Minn. R. 1400.5500 (K); see *Pietsch v. Mn. Bd. of Chiropractic Examiners*, 683 N.W.2d 303, 306 (Minn. 2004).

²⁸ Minn. R. Civ. P. 56.03 and Minn. Rules 1400.5500(K); see *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. Ct. App. 1988).

²⁹ Minn. R. 1400.6600.

³⁰ *Theile v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

³¹ See, e.g., *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993); *Ostendorf v. Kenyon*, 347 N.W.2d 834, 836 (Minn. Ct. App. 1984).

³² *Theile*, 425 N.W.2d at 583.

³³ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-51 (1986).

³⁴ See *Murphy v. Country House, Inc.*, 240 N.W. 2d 507, 511-12 (Minn. 1976); *Borom v. City of St. Paul*, 184 N.W.2d 595, 597 (Minn. 1971).

material fact is one that will affect the outcome of the case.³⁵ It is not sufficient for the non-moving party to rely on mere averments or denials; it must present specific facts demonstrating a genuine issue for trial.³⁶

City's Motion for Partial Summary Disposition

In its Motion, the City argues that it is entitled to summary disposition on three of the grounds on which it relied in its Notice of Hearing. First, the City asserts that Respondent's license "was procured by misrepresentation of material facts, fraud, deceit or bad faith," which is specified in Code Section 310.06(b)(1) as a ground for adverse action against a license or licensee. Second, the City contends that Respondent "made oral or written misstatements or misrepresentations of material facts in or accompanying the application," which is set forth in Section 310.06(b)(2) as a ground for adverse action. Finally, the City contends that Respondent's license "was issued in violation of law, without authority, and under material mistake of fact," which is a ground for adverse action under Section 310.06(b)(4) of the Code.

In support of its Motion, the City provided the affidavit of Jeffrey Fischbach, an employee of the St. Paul Department of Safety and Inspections who was on duty at the time Mr. Marouf submitted his application. In his affidavit, Mr. Fischbach stated that Mr. Marouf merely told him that he wished to obtain a tobacco retail license for a business he had recently purchased, St. Paul Grocery.³⁷ Mr. Fischbach asserted that Mr. Marouf did not state that he had any previous affiliation or association with St. Paul Grocery; mention the on-going litigation relating to the existing tobacco license for St. Paul Grocery; or disclose that he was alleged to be involved in the alleged improper conduct underlying that litigation.³⁸ Mr. Fischbach stated that the notes in the licensing database for the existing license at that time indicated only that a notice of revocation had been sent on July 10, 2013, without any further updates.³⁹ He stated that, under the Department's procedures, the database should have been updated to reflect the on-going litigation.⁴⁰ Because there was no update and several months had passed, Mr. Fischbach presumed that the matter had been resolved.⁴¹ Therefore, he administratively issued a tobacco license and alarm permit to Respondent.⁴²

Mr. Fischbach later learned from his supervisor that Saed Marouf was a named owner of Jamal & Saed Co., the entity that owned the preexisting tobacco license at St. Paul Grocery; Mr. Marouf had worked at St. Paul Grocery since 2010; and Mr. Marouf was directly involved in the unlawful acts alleged in the pending litigation.⁴³ He also discovered that Mr. Marouf's name appears on the lease for the premises that was submitted with the original application of Jamal & Saed for licensure in 2010, and

³⁵ See, e.g., *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996); *Highland Chateau v. Minnesota Dep't of Pub. Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984), *rev. denied* (Minn. Feb. 6, 1985).

³⁶ Minn. R. Civ. P. 56.05.

³⁷ Aff. of J. Fischbach, ¶ 2.

³⁸ *Id.*, ¶¶ 3 and 4 and Ex. A-1.

³⁹ *Id.*, ¶ 5.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*, ¶ 8.

⁴³ *Id.*, ¶ 6; compare Exs. A-4 through A-11 with Exs. B-4 through B-11.

that this was the same lease provided with Mr. Marouf's new application on September 27, 2013.⁴⁴ According to Mr. Fischbach's affidavit, if he had been aware of Mr. Marouf's previous affiliation with St. Paul Grocery, he would have "placed an administrative hold on the application, pending review by [his] supervisors and the City Attorney's Office."⁴⁵

In its Motion, the City contends that the "misrepresentations of Saed Marouf, in conjunction with the unwitting error of a city employee, led to an absurd result: a business owner was able to obtain a duplicate tobacco license mere days before the hearing intended to strip him of his existing tobacco license."⁴⁶ The City asserts that it should not be forced to retry the same issues litigated in the previous licensure matter. Instead, it argues that grounds for revocation of the license exist under the Saint Paul Legislative Code, and that partial summary disposition in its favor should be recommended. Due to Mr. Marouf's failure to disclose his previous employment and his attempt to obtain a duplicate tobacco license while engaged in litigation involving his existing license, the City alleges that Mr. Marouf procured the license by misrepresentation of material facts and in bad faith within the meaning of Code Section 310.06(b)(1) and made oral or written "misstatements or misrepresentations of material facts in, or accompanying, his application" within the meaning of Code Section 310.16(b)(2).

The City further argues that a recommendation for summary disposition is appropriate because the issuance of the license was a mistake that would not have occurred in the absence of Mr. Marouf's misrepresentations. The City emphasizes that, pursuant to Code Section 310.06(b)(4), the Council may revoke a license that was "issued in violation of law, without authority, or under a material mistake of fact." It points out that, under Code Section 310.04, the Department has authority to administratively issue Class R licenses (such as tobacco licenses) to an applicant only if no grounds for denial exist.⁴⁷ The City maintains that, had Mr. Marouf been fully forthcoming in his application and in explaining the situation to Mr. Fischbach, the application would have been placed on "administrative hold" and flagged for further review by Mr. Fischbach's superiors and the City Attorney's Office. The City contends that these individuals would have been aware of the grounds for denial of the application and would not have granted the license. Under the circumstances, the City asserts that the issuance of the tobacco license despite the existence of clear grounds for denial of such a license was without authority or based on a material mistake of fact within the meaning of Code Section 310.06(b)(4).

⁴⁴ Aff. of J. Fischbach, ¶ 6.

⁴⁵ *Id.*, ¶ 8.

⁴⁶ City's Memorandum in Support of Motion at 5.

⁴⁷ See Code Section 310.04(a) ("Where an application for the grant, issuance or renewal of a Class R license meets all the requirements of law, and there exists no ground for denial, revocation or suspension of, or the imposition of conditions upon, such license, the director shall grant, issue or renew said license in accordance with the application"); Section 310.04(c) ("In the event the director, in the case of both Class R and Class T licenses, determines that the application for grant, issuance or renewal of the license does not meet all the requirements of law or that there exist grounds for denial, revocation, suspension or other adverse action against the license or the licensee, the director shall recommend denial of the application and follow the procedures for notice and hearing as set forth in section 310.05").

Respondent's Response to City's Motion

In his Response in Opposition to the Motion, the Respondent asserts that the City's Motion should be denied because there are genuine issues of material fact relating to whether grounds exist for revocation of the license. He denies that his license was procured by misrepresentation of material fact, fraud, deceit, or bad faith, or that he made oral or written misstatements or misrepresentations of material facts in or accompanying his application for licensure. He also maintains that his license was not issued in violation of law, or without authority, or under material mistake of fact. At worst, Respondent contends he made an inadvertent mistake due to a misunderstanding of what was being requested in the section of the application labeled "Licensee Work History."⁴⁸

An affidavit signed by Mr. Marouf accompanies the Response in Opposition to the City's Motion. In his affidavit, Mr. Marouf admits that he was a partner with Jamal Aden with respect to the lease for the 712 University location, but otherwise denies that he has ever been a partner of Mr. Aden or an officer, agent, or shareholder of any entity which he owns or controls, including Jamal & Saed Company.⁴⁹ He stated that he met Jamal Aden through his family and wanted to learn the grocery business so that he could someday own his own store. For that reason, Mr. Marouf stated that Mr. Aden and he leased property at 712 University jointly in their names. However, Mr. Marouf asserted that Mr. Aden formed the entity called "Jamal & Saed Company" to own and operate the store, and that Mr. Marouf had nothing to do with the name and was not affiliated with the company.⁵⁰ According to the affidavit, Mr. Marouf was not involved in the store between September 2010 and December 2012 because he was in Michigan during that time, trying to improve his English language skills and earn enough money to buy the store.⁵¹

Mr. Marouf asserted that he moved to Minnesota on or about December 20, 2012, and became an employee of the Jamal & Saed Company, working at the 712 University store. He and Mr. Aden agreed that, if he was comfortable with the store after a few months, financially and operationally, he would buy the store from Mr. Aden.⁵² Mr. Marouf alleged that he worked only at the 712 University store and had no ownership or other relationship with the 631 University store.⁵³ Mr. Marouf admitted that he did on one occasion sell two single cigarettes. He denied, however, that he ever violated any EBT (electronic benefits program) procedures, was involved in purchasing any stolen merchandise, or sold any synthetic marijuana.⁵⁴ He argued that the grounds for revocation cited in Judge Wexler's report appear to cover a period of time dating back to June 2012 or earlier, prior to the time he was employed. In addition, he maintained that the Findings made by Judge Wexler appear to relate to both locations of the St. Paul Grocery store (the store previously located at 631 University as well as

⁴⁸ Notice of Motion and Responsive Motion Opposing Summary Disposition at 1.

⁴⁹ Aff. of Saed Marouf, ¶ 2.

⁵⁰ *Id.*, ¶ 6.

⁵¹ *Id.*, ¶ 5.

⁵² *Id.*, ¶ 7.

⁵³ *Id.*, ¶ 8.

⁵⁴ *Id.*, ¶ 14.

the store located at 712 University) and emphasizes that he was only employed by the 712 University store.⁵⁵

According to his affidavit, Mr. Marouf agreed to purchase the 712 University store in August of 2013. He set up the entity William LS Company, which purchased all of the store's assets from Jamal & Saed Company on September 23, 2013. He contended that, at the time of the purchase, Mr. Aden owned 100 percent of Jamal & Saed, and that Mr. Aden has no interest in William LS Company or in another grocery store Respondent operates at 927 University in St. Paul.⁵⁶

The Respondent's Memorandum in Opposition also noted that the City Council Resolution did not mention Saed Marouf by name and suggested that references in Judge Wexler's Findings to "Nahida (Saed) Marouf" or simply "Marouf" may refer to Saed Marouf's mother, Nahida Marouf, or his brother, Marouf Marouf.⁵⁷ Saed Marouf asserted in his affidavit that his mother and brother were business associates with Jamal Aden in 2011 and 2012, whether as partners or investors or in some other capacity, but contended that he was never involved in such associations.⁵⁸ Mr. Marouf also maintained that, contrary to Judge Wexler's Findings, his residence has never been the subject of a search warrant.⁵⁹

The Respondent admits that he failed to properly list his work history on the license application filed in September of 2013, but claims facts are in dispute "as to the reasons for this failure, specifically as to whether it was a mistake due to a misunderstanding, as stated by the Respondent, or an intentional misrepresentation, as alleged by the Department."⁶⁰ Mr. Marouf alleges in his affidavit that, when he applied for the tobacco license from the City, he did not know the "Licensee Work History" section of the form was requesting his personal work history but thought that it was only requesting information as to previous licenses that he or a company with which he was affiliated had held over the last five years.⁶¹ He stated that he was born and raised in Palestine and has only been in the United States for five years, so his understanding of the English language is "not so good."⁶² He denied that he was trying to lie or hide any information.⁶³

Analysis

After careful consideration of the arguments made by the parties, the Administrative Law Judge concludes that it is appropriate to recommend partial summary disposition in this matter on the ground that the license was issued under a material mistake of fact. There is no dispute that, when the Respondent went into the City offices to apply for a tobacco license, he told Mr. Fischbach that he (through

⁵⁵ Respondent's Memorandum in Opposition to City's Motion at 3-4.

⁵⁶ Aff. of S. Marouf, ¶¶ 4, 9-10 and 16, and attached Appendix A (Bill of Sale).

⁵⁷ Response in Opposition at 3-4, 6.

⁵⁸ Aff. of S. Marouf, ¶ 17(b).

⁵⁹ *Id.*, ¶ 17(d).

⁶⁰ Memorandum in Opposition at 7-8.

⁶¹ Aff. of S. Marouf, ¶ 11.

⁶² *Id.*, ¶ 12.

⁶³ *Id.*, ¶ 13.

William LS Company) had just bought St. Paul Grocery. It is also undisputed that the Respondent—whether knowingly or innocently—did not disclose in his oral statements or application materials that he had previously worked at St. Paul Grocery.

There is clear evidence that Mr. Fischbach made at least two material mistakes of fact in reaching his decision to grant the license. First, he assumed that the matter relating to revocation of Jamal & Saed's license had been resolved due to the passage of time and the absence of updates in the database. Second, he assumed—based on the Respondent's failure (whether intentional or not intentional) to provide accurate information in response to the work history inquiry on the form—that the Respondent was merely a new store owner who had not been previously involved in any way with St. Paul Grocery. It is clear that, had Mr. Fischbach been aware of the on-going litigation or the Respondent's prior employment at St. Paul Grocery, he would have realized that there may be grounds to deny the application and, in accordance with Code Section 310.04(a) and (c), would not have approved the issuance of the license but instead would have flagged it for further review by his supervisors and the City Attorney's Office. Under these circumstances, it is evident that the City has shown that grounds exist for revocation of the license because it was issued under a material mistake of fact within the meaning of Code Section 310.06(b)(4).

The Respondent has shown that genuine issues of fact remain for hearing regarding the other two grounds upon which the City relies. Specifically, the Respondent has shown that there are issues of material fact regarding whether he in fact understood that the question posed on the application form was requesting work history information and to what extent he was involved in the prior operations of St. Paul Grocery and the misconduct that occurred there. The Code does not define "misstatement" or "misrepresentation" or describe whether the statement at issue must have been made with knowledge of its falsity. The common meaning of "misstatement" is "the act of stating something that is false or not accurate."⁶⁴ The common meaning of "misrepresentation" is "the act of giving false information about something or someone, often in order to get an advantage."⁶⁵ Taking the facts and inferences in the light most favorable to the non-moving party, as is required at the summary disposition stage, it must be assumed that Mr. Marouf thought the question that was being posed on the form requested information about other licensed businesses with which he was involved and thus responded by providing the address of the other grocery store he operated. The Administrative Law Judge is not persuaded that the City is entitled to judgment as a matter of law that Mr. Marouf made a misrepresentation or a misstatement if he failed to volunteer information that he did not realize was being requested. Moreover, the nature of the misconduct that is the subject of Code Section 310.06(b)(1)—misrepresentation of material facts, fraud, deceit or bad faith—implies that some level of intent is necessary to warrant the conclusion that a violation occurred. The Administrative Law Judge concludes that a hearing would be necessary to further develop the record to determine whether revocation is warranted due to a misstatement or a

⁶⁴ See, e.g., <http://dictionary.cambridge.org/us/dictionary/business-english/misstatement?q=misstatement>.

⁶⁵ See, e.g., <http://dictionary.cambridge.org/us/dictionary/business-english/misrepresentation?q=misrepresentation>.

misrepresentation. For that reason, summary disposition under Code Sections 310.06(b)(1) and (2) is not recommended at this time.

This recommendation is being certified to the Saint Paul City Council for a final decision pursuant to Minn. R. 1400.7600(B) based upon a determination that a final decision by the City on the motion would materially advance the ultimate termination of the hearing. During the motion argument, the City noted that it wished to reserve its right to pursue the other grounds set forth in the Notice of Hearing after the City renders its decision.

B. L. N.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
PO BOX 64620
600 NORTH ROBERT STREET
ST. PAUL, MN 55164-0620

CERTIFICATE OF SERVICE

In the Matter of the Cigarette Tobacco Licence and Alarm Permit held by William LS Company d/b/a St. Paul Grocery	OAH Docket No.: 11-6020-31183
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Rachel Youness, certifies that on May 13, 2014, she served the true and correct
**RECOMMENDED ORDER ON CITY'S MOTION FOR PARTIAL SUMMARY
DISPOSITION AND ORDER CERTIFYING MATTER TO SAINT PAUL CITY COUNCIL**
by courier service or by placing it in the United States mail with postage prepaid,
addressed to the following individuals:

City of St. Paul
290 City Hall
15 W Kellogg Blvd
Saint Paul, MN 55102

Geoffrey S. Karls
St. Paul City Attorney's Office
Assistant City Attorney
400 City Hall & Courthouse
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